releases the sureties. *Young Men's Christian Association* v. *United States etc., Co.* (Kan.), 133 Pac. 894.

The great majority of cases hold that contracts of a surety company which make suretyship a matter of profit shall be treated as insurance contracts, to be construed, in case of ambiguity, in favor of the insured. *U. S. Fidelity and Guar. Co.* v. *Golden, etc., Co.,* 191 U. S. 416. And it has further been held that a surety on a contractor's bond is an insurer and that a breach by the creditor releases the surety only *pro tanto. Hormel* v. *America Bonding Co.,* 112 Minn. 288, 128 N. W. 12, 33 L. R. A. (N. S.) 513. But under the facts in the principal case a stricter rule should apply. The reservation of part of the contract price is for the benefit of the bonding company as well as the creditor. *Prairie State Bank* v. *U. S.,* 164 U. S. 227; *Finney* v. *Condon,* 86 Ill. 78. In the case of unauthorized premature payments, such as occurred in the principal case, the contract of surety should be strictly construed; and the weight of authority is to the effect that the surety is completely discharged. *Taylor* v. *Jeter,* 23 Mo. 244; *Cowdery* v. *Hahn,* 105 Wis. 455, 81 N. W. 882, 76 Am. St. Rep. 923. The rule completely relieving the sureties in the case of premature payments seems to be the sounder in principle. Such payment of the reserved fund deprives the bonding company of the inducement which the principal had to complete the work in compliance with the terms of the contract. *Backus* v. *Archer,* 109 Mich. 666, 67 N. W. 913; *Calvert* v. *London Dock Co.,* 2 Keen 639. When two parties have reduced their wishes to a contract they have the right to enforce a strict observance of the same. *Bank* v. *Fidelity and Dep. Co.,* 14 Ala. 335, 40 So. 415, 5 L. R. A. (N. S.) 418 (note).

UNFAIR COMPETITION—MEASURE OF DAMAGES.—In a successful suit on the ground of unfair competition, it was *Held,* in addition to an injunction, the appellant is entitled to compensatory damages for injury to his business in the past, which are not, as in the case of trademarks, measured by the profits made by the appellee but are to be based upon the actual injury to his business. *Wolf Bros. & Co.* v. *Hamilton-Brown Shoe Co.,* 206 Fed. 611.

As to the measure of damages in cases of infringement of rights under trademarks there is some variance of opinion. All the courts are agreed that, in addition to an injunction, the plaintiff is entitled to damages equal in amount at least to profits lost by reason of such infringement, which may best be shown by the defendant's sales of the infringing article. *Societe Anonyme* v. *West Dist. Co.,* 46 Fed. 921; *Hostetter* v. *Vowinkle,* 1 Dill. 329, 12 Fed. Cases 546; *Merriam Co.* v. *Saalfield,* 198 Fed. 369, 117 C. C. A. 245. Some cases go further and hold that besides an injunction the plaintiff is entitled not only to profits lost (which are generally held to be the profits realized by the defendant) but also to damages for injury done to his business by the sale of the spurious goods under his trademark. *Benkert* v. *Feder,* 34 Fed. 534; *Hennessy* v *Wilmerding-Loewe Co.,* 103 Fed. 90.

The allowance of damages for unfair competition is of comparatively modern origin, and naturally there is some diversity in the decisions on

this point. Due to the analogy between unfair competition and the infringement of rights under trademarks, a number of cases hold that the measure of damages for unfair competition, in addition to the remedy by injunction, is the profits of the defendant. *Lever* v. *Goodwin,* 36 Ch. Div. 1; *Walter Baker & Co.* v. *Slack,* 130 Fed. 514, 65 C. C. A. 138. One case goes still further and holds, just as in some trademark cases, that besides an injunction and damages measured by profits of the defendant, the plaintiff is also entitled to damages for injury done his business by reason of the sale of the spurious goods. *Gulden* v. *Chance,* 182 Fed. 303, 105 C. C. A. 16. A third view, as supported by the principal case, is that, in addition to an injunction, the plaintiff is entitled only to compensation for the injury done his business by the actual invasion of his rights. *Williams* v. *Mitchell,* 106 Fed. 168, 45 C. C. A. 138.

Since there is a clean-cut distinction between unfair competition and the infringement of rights under trademarks in that the owner of a trademark has a special property therein, it would appear that the rule as laid down in the principal case is the better.

USURY—PRINCIPAL AND AGENT—MONEY LENT THROUGH AGENT.—Money was left with an agent to be lent, and the agent extracted a bonus in addition to the highest legal rate of interest. The lender neither authorized, nor had notice of the illegal act of the agent, nor did she enjoy any usurious benefit. *Held,* the usury taken by the agent does not affect the principal's right to recover. *Bryan* v. *Johnson* (Utah), 134 Pac. 590.

When an agent is given authority to lend money, it is *prima facie* presumed that he will lend it at the legal rate of interest. *Call* v. *Palmer,* 116 U. S. 98. And when the agent extracts a private bonus without the knowledge, authority, or ratification, of the principal, he then steps outside of his authority as agent, and is acting for himself. The principal case was decided upon this ground, and is supported by the overwhelming weight of authority. *Stillman* v. *Northrup,* 109 N. Y. 437, 17 N. E. 379; *Stein* v. *Swenson,* 44 Minn. 218, 46 N. W. 360; *Call* v. *Palmer, supra.* This principle holds good even where a husband is agent for his wife. *Brigham* v. *Myers,* 51 Iowa 397, 1 N. W. 613, 33 Am. Rep. 140. Or where a president acts for his bank. *Chicago Fire Proofing Co.* v. *Bank,* 145 Ill. 481, 32 N. E. 534. But when a principal agrees with his agent that the latter is to receive the highest legal rate of interest on the money lent, but must look solely to the borrower for his compensation, the lender is then deemed to have acquiesced in any usurious transactions which the agent might make. *Fowler* v. *Equitable Trust Co.,* 141 U. S. 384; *Sherwood* v. *Roundtree,* 32 Fed. 113. On the other hand, if a loan broker who has no legal or established relation with the lender, negotiates a loan at the highest legal rate, it does not affect the validity of the loan that there is a commission charged the borrower, for such commission cannot be imputed to the lender as a part of the interest received by him. *Whaley* v. *American, etc., Co.,* 74 Fed. 73; *Mass. Mut. Life Ins. Co.* v. *Boggs,* 121 Ill. 119, 13 N. E. 550.